

Jeffrey T. Murray (ASB # 19223)
LASOTA & PETERS, PLC
722 E. Osborn, Suite 100
Phoenix, Arizona 85014
Telephone: (602) 248-2900
Fax: (602) 248-2999
jtmurray@lasotapeters.com

IN THE SUPREME COURT
STATE OF ARIZONA

In the Matter of:

PETITION TO AMEND RULE 4.1(i),
ARIZONA RULES OF CIVIL PROCEDURE.

No. R-11-0031

**Comment to Petition to Amend
Rule 4.1(i), Arizona Rules of Civil
Procedure**

Pursuant to Rule 28(D), Rules of the Supreme Court, Jeffrey T. Murray, on behalf of the Arizona Municipal Risk Retention Pool, representing approximately 74 cities and towns around the State of Arizona, as well as Valley Metro - Regional Public Transportation Authority, submits this Comment to the proposed changes to Rule 4.1(i).

The purposes behind the notice of claim requirements are “to allow the public entity to investigate and assess liability, to permit the possibility of settlement prior to litigation, and to assist the public entity in financial planning and budgeting.” *Falcon v. Maricopa Cnty.*, 213 Ariz. 525, 527, ¶ 9, 144 P.3d 1254, 1256 (2006) (quoting *Martineau v. Maricopa Cnty.*, 207 Ariz. 332, 335-36, ¶ 19, 86 P.3d 912, 915-16 (App. 2004)). The proposed rule change (“Proposal”) would (1) allow service of a notice of claim on a single board or council member, and (2) allow service on the “administrative assistant or employee” of any single board member, council member, or other person subject to service under the Rule. This Proposal undermines the purposes behind the notice of claim requirements by ignoring the statutory importance of the Notice of Claim statutes.

1 As noted above, the reason behind the notice of claim statute is to permit
2 governmental entities to assess potential liability and possibly initiate settlement
3 discussions within the first 60 days prior to the filing of potentially expensive and costly
4 litigation. Given this stated reason, to deem sufficient service on any one member or
5 their administrative assistant or employee, seems to inherently increase the risk that a
6 Notice of Claim may be unintentionally lost, misplaced or simply delayed in reaching the
7 proper recipients given an employee's lack of understanding of the statutory significance
8 of a Notice of Claim.

9 The possibility of loss or misplacement is magnified by the fact that many board,
10 district and council members, and their assistants, are part-time or volunteers, such that
11 understanding the statutory significance of a Notice of Claim may be lost or even non-
12 existent. Combine this general lack of knowledge with the fact that local governments
13 routinely receive Notices of Claim in what appear to be nothing more than simple
14 correspondence. Obviously, identifying the importance of a formal notice prepared by a
15 lawyer or law firm is much easier to recognize than a Notice prepared by a pro per under
16 the guise of a letter from a constituent, yet meets all the statutory requirements of a
17 Notice of Claim. Whereas a Mayor or city or town clerk might recognize the significance
18 of such a letter, a lay person, assistant or employee may not.

19 To the extent the Proposal is not limited to Notices of Claim, but also includes
20 service in general, including complaints, the same concerns set forth above are
21 applicable. In fact, the Proposal could have an even more significant impact on actual
22 complaints. If a plaintiff can prove service on any assistant or employee, but that
23 assistant or employee fails to properly route the complaint, the results could be
24 financially catastrophic. At a minimum, it would seem that the courts should expect an
25 increase in the number of motions for reconsideration and/or motions for leave to file
26 untimely answers before and after default proceedings have been initiated. At this point,
27 it certainly seems unclear, at best, if notice on an administrative assistant or some random
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1 employee would be sufficient to ensure that due process requirements have been met.
2 *Dixon v. Picopa Constr. Co.*, 160 Ariz. 251, 261, 772 P.2d 1104, 1114 (1989) (Notice is
3 sufficient for due process purposes if it is “reasonably calculated, under all the
4 circumstances, to apprise interested parties of the pendency of the action and afford them
5 an opportunity to present their objections” or claims).

6
7 **CONCLUSION**

8 For the foregoing reasons, including those set forth by Eileen Gilbride, of Jones,
9 Skelton and Hoculi, and those set forth by Joni Hoffman of the Arizona League of Cities
10 and Towns, undersigned counsel on behalf of the Arizona Municipal Risk Retention Pool
11 and Valley Metro – RPTA, opposes the proposed rule change.

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13 RESPECTFULLY SUBMITTED this 23rd day of April, 2012.

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15 **LASOTA & PETERS, PLC**

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17 /s/ Jeffrey T. Murray

18 Jeffrey T. Murray
19 722 E. Osborn, Suite 100
20 Phoenix, Arizona 85014
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